IN THE

Supreme Court of the United States

Supreme Court, U. S.
FILED
JUN 6 1979
MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1979

No._____Misc.

~~78-1829~~

DAVID E. MIKE, ERNEST S. MIKE, and ANN MIKE,

Petitioners,

v.

SIGMA NU FRATERNITY (UNINCORPORATED NATIONAL FRATERNITY ASSOCIATION), SIGMA NU FRATERNITY-EPSILON MU CHAPTER (UNINCORPORATED LOCAL FRATERNITY ASSOCIATION), BUTLER UNIVERSITY, EPSILON MU HOUSE ASSOCIATION, INC., MARK V. BOHNERT, BRUCE CARMICHAEL, MARK R. CHAPPUIS, DAVID T. CUNNINGHAM, DAVID DEER, ROGER R. DODSON, THOMAS J. FISCHER, CHRIS GLANCY, BRADFORD D. GOFFINET, JOHN R. GUGGENHEIM, JERRY W. HIGHLEY, DAVID HULLETT, TIMOTHY KELLY, DAVID LANTNER, JAY LOVE, THOMAS S. MENCH, KENT E. MOORE, MARK MORELLI, LEE SCHLUGE, JR., FRANCHON M. SMITHSON, STEVE A. TAYLOR, STEPHEN J. VIRGIL, and ANDREW J. WETZEL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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IN THE

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DAVID E. MIKE, ERNEST S. MIKE, and ANN MIKE,

Petitioners,

v.

SIGMA NU FRATERNITY (UNINCORPORATED NATIONAL FRATERNITY ASSOCIATION), SIGMA NU FRATERNITY-EPSILON MU CHAPTER (UNINCORPORATED LOCAL FRATERNITY ASSOCIATION), BUTLER UNIVERSITY, EPSILON MU HOUSE ASSOCIATION, INC., MARK V. BOHNERT, BRUCE CARMICHAEL, MARK R. CHAPPUIS, DAVID T. CUNNINGHAM, DAVID DEER, ROGER R. DODSON, THOMAS J. FISCHER, CHRIS GLANCY, BRADFORD D. GOFFINET, JOHN R. GUGGENHEIM, JERRY W. HIGHLEY, DAVID HULLETT, TIMOTHY KELLY, DAVID LANTNER, JAY LOVE, THOMAS S. MENCH, KENT E. MOORE, MARK MORELLI, LEE SCHLUGE, JR., FRANCHON M. SMITHSON, STEVE A. TAYLOR, STEPHEN J. VIRGIL, and ANDREW J. WETZEL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

David E. Mike, Ernest S. Mike, and Ann Mike, by counsel, Donald F. Foley of Yaeger, Foley, McLin & Cutter, pray that a Writ of Certiorari issue to review the order of the Indiana Supreme Court, denying Petitioners' Petition to Transfer from the Court of Appeals of Indiana, which Court dismissed Petitioners' appeal of a County Superior Court, State of Indiana.

DECISION BELOW

The order of the Court of Appeals of Indiana, Second District, was issued without opinion. The order was entered on August 21, 1978, and it is attached as Appendix "A" of this Petition. Rehearing was denied October 18, 1978, without opinion respecting Petitioners' Petition For Rehearing in the Court of Appeals. Thereafter, the Indiana Supreme Court denied transfer on March 9, 1979, without opinion respecting a Petition for Transfer (Appendix "B").

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3) and in accordance with this Court's Rule 19(1)(a). The Court of Appeals of Indiana and the Indiana Supreme Court have decided a federal question of substance in a manner contrary to the applicable decisions of this Court, and is in conflict with Petitioners' due process rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

QUESTIONS PRESENTED

Whether or not Petitioners were deprived of the right to due process when their appeal from the Court of Appeals of Indiana was denied transfer to the Indiana Supreme Court for Petitioners' alleged failure to timely file the transcript of proceedings under the following circumstances:

1. **There were dual entries in the certified record of the trial proceedings which indicated that Petitioners' Motion to Correct Errors had been denied on two (2) different dates, those being December 22, 1977 and January 4, 1978 (Appendices "C" and "D");**
2. **Petitioners relied on the last certified entry which indicated that their Motion to Correct Errors had been denied only seventy-seven (77) days prior to the filing of the transcript with the Clerk of the Court of Appeals of Indiana (Appendix "D") (Indiana's Appellate Rule 3 provides a transcript must be filed within ninety days after the Motion to Correct Errors is overruled);**
3. **Petitioners were misled by an ambiguous record as to the date that their Motion to Correct Errors was denied (Appendices "C" and "D");**
4. **Petitioners' failure to timely file the transcript was the direct result of their having been misled by the manner in which the clerk compiled the record, and by the Court's duplicitous entries regarding the overruling of the Motion to Correct Errors;**
5. **Petitioners' failure to file the transcript in accordance with the first such entry, constituted excusable neglect.**

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Constitution of the United States of America, Amendment XIV, §1 (1868) provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. *No State shall* make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state *deprive any person of* life, liberty, or *property, without due process of law;* nor deny to any persons within its jurisdiction the equal protection of the laws." (Emphasis Added)

2. The Bill of Rights of the Indiana State Constitution (1851) provides:

> "**§12. Courts open — Due course of law — Administration of justice.** — *All courts shall be open; and every man, for injury done to him in his person,* property, or reputation, *shall have remedy by due course of law. Justice shall be administered freely,* and without purchase; *completely, and without denial;* speedily, and without delay." (Emphasis Added)

3. Article VII, Section 6 of the Indiana State Constitution, (1851, as amended November 3, 1970) provides:

> "**§6. Jurisdiction of Court of Appeals.** — The Court shall have no original jurisdiction, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies. In all other cases, *it shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules which shall, however, provide in all cases an absolute right to one appeal* and to the extent provided by rule, review and revisions of sentences for defendants in all criminal cases." (Emphasis Added)

4. Indiana Rules of Appellate Procedure (A.P. 3) provides:

> "(A) Submission. Every appeal shall be deemed submitted and the appellate tribunal deemed to have acquired jurisdiction thereof on the date the record of the proceedings is filed with the clerk of the Supreme Court and Court of Appeals.
>
> (B) Time within which the Appeal must be Submitted. *In all appeals and reviews,* except those from interlocutory orders, *the record of the proceedings must be filed with the clerk of the Supreme Court and Court of Appeals within ninety (90) days from the date of the judgment or the ruling on the motion to correct errors, whichever is later.* In appeals and reviews of interlocutory orders the record of the proceedings shall be filed within thirty (30) days of the ruling.

> However, if the statute under which the appeal or review is taken fixes a shorter time, the time fixed by the statute shall prevail. (Emphasis Added)

5. 28 U.S.C., Section 1257(3) provides:

> "*Final Judgments or decrees* rendered by the highest court of a State in which a decision could be had, *may be reviewed* by the Supreme Court as follows:
>
> ***
>
> (3) *By writ of certiorari,* where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or *where any* title, *right,* privilege or immunity *is specially set up or claimed under the Constitution,* treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929." (Emphasis Added)

STATEMENT OF THE CASE

Petitioners respectfully submit that substantial Federal Constitutional questions were timely and properly raised so as to give the Supreme Court of the United States jurisdiction to review the decree of the highest acting state court of Indiana on Writ of Certiorari.

The original action was commenced on July 31, 1975, when Petitioners filed their Complaint for damages against the Respondents in the Marion County Circuit Court. The case was subsequently venued to the Hamilton County Superior Court. Petitioners' Complaint requested damages for personal injuries suffered by David E. Mike when he was struck by an automobile during a fraternity initiation hike. On October 4, 1977, the Trial Court granted summary judgment in favor of the Respondents by finding that David E. Mike, as a matter of law, was either contributorily negligent or incurred the risk of his injuries. Petitioners filed their Motion to Correct Errors on December 2, 1977.

The issue revolves around the date that the Trial Court denied Petitioners' Motion to Correct Errors. Petitioners' counsel obtained the certified record of proceedings from the clerk of the Trial Court on January 19, 1978, and immediately began preparing the transcript for filing. The transcript was filed with the Clerk of the Court of Appeals of Indiana on March 22, 1978. Page 1111 of the transcript, reproduced at Appendix "D", indicates that the Motion to Correct Errors was denied on January 4, 1978, which would have allowed the transcript to have been filed on or before April 4, 1978. Page 1104 of the transcript, reproduced at Appendix "C", indicates that the Motion to Correct Errors was overruled, but does not indicate a date for the ruling other than December 22, 1977, which would have allowed the transcript to have been filed on or before March 22, 1978.

Respondents filed a motion to dismiss the appeal on April 4, 1978, contending that the entry appearing on page 1104 of the transcript (Appendix "C") was a part of the entry of December 20, 1977, appearing on page 1096 of the transcript which is reproduced as Appendix "E" to this Petition.

The Court of Appeals of Indiana ordered the appeal dismissed for lack of jurisdiction on August 21, 1978. The Order found that "the trial court overruled the appellants' motion to correct errors on December 20, 1977; that ninety (90) days thereafter fell on Monday, March 20, 1978..." (Appendix "A") The Court of Appeals of Indiana, Second District, denied Petitioners' Petition For Rehearing on October 18, 1978, a copy of which appears as Appendix "F"; and Petitioners' Petition For Transfer was denied by the Indiana Supreme Court on March 9, 1979, copy of which appears as Appendix "G".

REASONS FOR GRANTING WRIT

Article VII, Section 6 of the Indiana State Constitution provides an "absolute right" to one appeal in all cases. This substantive right to appeal is the basis upon which rules of appellate procedure were adopted by the Indiana Supreme

Court. The Indiana Supreme Court's inconsistent application of its rules of procedure for appeal has denied a constitutional right to due process. Such action by the Indiana Supreme Court amounts to a revocation of the petitioners' right to an appeal. All previous legal precedent of the Indiana Supreme and Appellate Courts held that appellants could rely upon the verity of the certified record, and in cases similar to the one at bar, Indiana precedent has allowed an appeal on the merits.

Although the right to an appeal is not essential to due process and a state does not have to provide for an appeal, where the state guarantees the right to appeal, the requirements of due process must be afforded the litigants. *Cole v. State of Arkansas* (1948) 333 U.S. 196, 92 L. Ed. 644, 68 S.Ct. 514, *National Union of Marine Cooks and Stewards v. Arnold* (1954) 348 U.S. 37, 99 L.Ed 46, 75 S.Ct. 92; *Brinkerhoff-Faris Trust & Savings Co. v. Hill* (1930) 281 U.S. 673, 74 L.Ed. 1107, 50 S.Ct. 451. This Court has recognized that the failure to timely file a transcript for reasons beyond the litigant's control is not sufficient justification for dismissing an appeal. *St. Louis & San Francisco R. Co. v. Spiller* (1927) 275 U.S. 158, 72 L.Ed. 215, 48 S.Ct. 96; *Alviso v. United States* (1867) 73 U.S. 457, 6 Wall. 457, 18 L.Ed. 721.

In 1973, the Indiana Supreme Court concluded that:

> To hold that an appeal is forfeited *ipso facto* when no praecipe is filed within thirty days of the court's ruling on the motion to correct errors, regardless of whether notice was ever issued or regardless of any other circumstances..., would raise substantial constitutional questions concerning such procedure in light of the guarantee of the right to appeal. Art. 7, §6, Constitution of the State of Indiana. *Soft Water Utilities, Inc. v. Le Fevre* (1973) 261 Ind. 260, 301 N.E.2d 745, 750.

In light of Indiana's constitutional right to an appeal, due process was not preserved where the state appellate court automatically dismissed the appeal when, due to circumstances outside of the litigant's control, the transcript was not filed within the ninety (90) day period

prescribed by the appellate rule. It is the declared policy of the Indiana Supreme Court that cases be decided upon their merits insofar as possible. *Costanzi v. Ryan* (1977), ___ Ind. App.___, 368 N.E. 2d 12. Hence, the Indiana Court of Appeals has departed from the accepted and usual course of judicial proceedings.

Petitioners are entitled to rely upon the certified entries contained in the record of the proceedings when calculating the time for perfecting an appeal. *C.F. Anderson v. Indiana State Employees Appeals Commission* (1977), ___ Ind. App.___, 360 N.E.2d 1040. Petitioners relied on page 1111 of the transcript (Appendix "D") in deciding to file the transcript on or before April 4, 1978. If the entry is not accurate, Petitioners should not be penalized. In such case, the entry would be a duplicitous, meaningless, and deceptive entry by the trial court.

Page 1104 of the transcript (Appendix "C"), which provided the other reference to the denial of Petitioners' Motion to Correct Errors, was not dated. Given the relative ease with which the clerk of the trial court could have indicated this crucial date on the page bearing the entry, Petitioners should not be stripped on their right to appeal for failing to realize that the entry on page 1104 was intended as a continuation of the entry beginning on page 1096 of the transcript.

Strict compliance with the ninety (90) day requirement for filing of the transcript has been held to be jurisdictional in Indiana. But where noncompliance is due to misleading entries of the trial court or the compilation of the record by its clerk, an automatic dismissal of the litigant's appeal constitutes an arbitrary and capricious deprivation of a property right without the due process guarantees of the Fourteenth Amendment of the Constitution of the United States. At worst, Petitioners' failure to comply with the letter of Indiana A.P. 3 was the result of excusable neglect induced by the conduct of the trial court and its clerk.

CONCLUSION

For all the reasons stated hereinabove, this petition for writ of certiorari should be granted.

Respectfully submitted,

Donald F. Foley,
Yaeger, Foley, McLin & Cutter
620 Union Federal Building
Indianapolis, Indiana 46204
Attorney for Petitioners

APPENDIX

APPENDIX "A"

IN THE

Court of Appeals of Indiana

SECOND DISTRICT

DAVID E. MIKE, ERNEST S. MIKE, and ANN MIKE, *Plaintiffs-Appellants,*	)	
v.	)	CAUSE NO.
	)	2-378-A-98
SIGMA NU FRATERNITY (UNINCORPORATED NATIONAL FRATERNITY ASSOCIATION), SIGMA NU FRATERNITY-EPSILON MU CHAPTER (UNINCORPORATED LOCAL FRATERNITY ASSOCIATION), BUTLER UNIVERSITY, EPSILON MU HOUSE ASSOCIATION, INC., MARK V. BOHNERT, BRUCE CARMICHAEL, MARK R. CHAPPUIS, DAVID T. CUNNINGHAM, DAVID DEER, ROGER A. DODSON, THOMAS J. FISCHER, CHRIS GLANCY, BRADFORD D. GOFFINET, JOHN R. GUGGENHEIM, JERRY W. HIGHLEY, DAVID HULLETT, TIMOTHY KELLY, DAVID LANTNER, JAY LOVE, THOMAS S. MENCH, KENT E. MOORE, MARK MORELLI, LEE SCHLUGE, JR., FRANCHON M. SMITHSON, STEVE A. TAYLOR, STEPHEN J. VIRGIL, and ANDREW J. WETZEL, *Defendants-Appellees*	)	

ORDER

This cause pending before the Court on the several Motions to Dismiss and briefs in support thereof, filed by the several appellees, each of which said motions alleges that the record of the proceedings was not timely filed, and upon the responses of the appellants to appellees' motions, all of which are more particularly in the following words and figures, to-wit:

(H.I.)

And the Court, having examined these matters, having examined the record of the proceedings herein, and being duly advised, now finds that the trial court overruled the appellants' motion to correct errors on December 20, 1977; that ninety (90) days thereafter fell on Monday, March 20, 1978; that appellants neither sought nor obtained an extension of time from this Court within which to file the record of the proceedings; that the record of the proceedings was not tendered to the Clerk of this Court for filing until March 22, 1978; that this Court does not have jurisdiction of this cause by reason of appellants' failure to timely file the record of the proceedings; that the several Motions to Dismiss should be granted and this cause should be dismissed.

IT IS THEREFORE ORDERED that all of the Motions to Dismiss filed by the several appellees are granted and this cause is dismissed.

ORDERED this 21st day of August, 1978.

/s/ PAUL H. BUCHANAN, JR.

CHIEF JUDGE

SULLIVAN, J., dissents:

I dissent upon the authority of *Constanzi v. Ryan* (1st Dist. 1978), Ind. App., 370 N.E. 2d 1333, as cited and relied upon by the Indiana Supreme Court in *Adams v. Callahan*, No. 178-S-6 (unpublished order granting transfer dated January 11, 1978).

APPENDIX "B"

IN THE

Indiana Supreme Court

NO. 2-378A98

DAVID E. MIKE, ERNEST S. MIKE, and ANN MIKE, *Plaintiffs-Appellants,* v. SIGMA NU FRATERNITY (UNINCORPORATED NATIONAL FRATERNITY ASSOCIATION), SIGMA NU FRATERNITY-EPSILON MU CHAPTER (UNINCORPORATED LOCAL FRATERNITY ASSOCIATION), BUTLER UNIVERSITY, EPSILON MU HOUSE ASSOCIATION, INC., MARK V. BOHNERT, BRUCE CARMICHAEL, MARK R. CHAPPUIS, DAVID T. CUNNINGHAM, DAVID DEER, ROGER A. DODSON, THOMAS J. FISCHER, CHRIS GLANCY, BRADFORD D. GOFFINET, JOHN R. GUGGENHEIM, JERRY W. HIGHLEY, DAVID HULLETT, TIMOTHY KELLY, DAVID LANTNER, JAY LOVE, THOMAS S. MENCH, KENT E. MOORE, MARK MORELLI, LEE SCHLUGE, JR., FRANCHON M. SMITHSON, STEVE A. TAYLOR, STEPHEN J. VIRGIL, and ANDREW J. WETZEL, *Defendants-Appellees.*	Appeal from the Hamilton Superior Court The Honorable V. Sue Shields, Judge

APPELLANTS' PETITION FOR TRANSFER

Come now the Appellants-Plaintiffs, David E. Mike, Ernest S. Mike, and Ann Mike, by counsel, and respectfully

request this Court to grant a transfer in the above-captioned cause for the following reasons:

1. Appellants' appeal was dismissed by Order of the Indiana Court of Appeals, Second District, dated August 21, 1978, finding that the Record of Proceedings was not timely filed, Judge Sullivan dissenting.

2. Appellants timely filed a Petition for Rehearing with the Indiana Court of Appeals, and a rehearing was denied by Order on October 18, 1978, Judge Sullivan dissenting.

3. The Order is in error in each of the following particulars:

(a) In deciding that the Appellants failed to timely file the Record of the Proceedings, as required by Appellate Rule 3(B), the Indiana Court of Appeals did not follow the precedent of the Indiana Supreme Court in the cases of *American States Insurance Company vs. State ex rel Jennings* (1972), 258 Ind. 637, 283 N.E.2d 529 (vacated order dismissing appeal where the certified record contained an error as to the date the Motion to Correct Errors was overruled); *Soft Water Utilities vs. Le Fevre* (1973), 261 Ind. 260, 301 N.E.2d 745 (vacated order dismissing appeal where Trial Court, on appellant's motion, changed the date of the overruling of the Motion to Correct Errors because appellant did not receive notice of the original ruling until after the time had expired for the filing of a praecipe); *Adams vs. Callahan, et al*, NO. 178 S 6 (by order dated January 11, 1978, vacated dismissal of appeal where appellants, in calculating the time for filing the record, relied upon an erroneous notice from the Trial Court of the date on which the Motion to Correct Errors was overruled, even though the certified Record of the Proceedings indicated the correct date of the ruling);

(b) In deciding that the Appellants failed to timely file the Record of Proceedings, as required by Appellate Rule 3(B), the Indiana Court of Appeals erroneously decided a new question of law by finding that the Appellants failed to timely file the Record of Proceedings, when Appellants filed such Record of Proceedings on March 22, 1978, seventy-seven days after the certified Record indicated

that the Motion to Correct Errors was overruled (such ruling was made on January 4, 1978).

(c) In deciding that the Appellants failed to timely file the Record of Proceedings when there were two certified entries in the Record for the overruling of the Motion to Correct Errors, the Indiana Court of Appeals erroneously decided a new question of law in finding that Appellants were required to rely on an earlier entry overruling the Motion to Correct Errors, although Appellants were in no way responsible for the ambiguity and confusion created by the dual certified entries; Appellants' reliance on the January 4, 1978 entry constitutes an excusable mistake sufficient to allow this appeal to be heard on its merits;

(d) In deciding that the Appellants failed to timely file the Record of Proceedings as required in Appellate Rule 3(B); the Indiana Court of Appeal's Order is in direct conflict with *Costanzi vs. Ryan* (1977), Ind. App. 368 N.E. 2d 12, wherein the First District of the Indiana Court of Appeals ordered a late filed interlocutory appeal to be heard and decided on its merits to insure that the ends of justice would be served;

(e) In deciding that the Appellants failed to timely file the Record of the Proceedings pursuant to Appellate Rule 3 (B), the Indiana Court of Appeals refused to follow the guidelines provided by decisions of the Indiana Supreme Court in relieving a party from a procedural error in presenting his appeal where that error is induced by the party's good faith reliance upon the certified Record, the actions of the Trial Court, or the actions of the Clerk, in which cases the Indiana Supreme Court have strongly favored deciding such appeals on their merits;

(f) In deciding that the Appellants failed to timely file the Record of the Proceedings pursuant to Appellate Rule 3(B), the Indiana Court of Appeals erroneously concluded that the failure of the Clerk of the Trial Court to designate the date that Appellants' Motion to Correct Errors was overruled on the same page where the entry appears in the Record, which induced Appellants to rely on the Clerk's indication that the ruling on the Motion to Correct Errors

and notice to counsel of said ruling occurred on the same day, did not constitute an excusable mistake of fact sufficient to relieve Appellants of the strict requirements of Appellate Rule 3(B) allowing this appeal to be decided on its merits.

WHEREFORE, for each of the above-specified reasons, the Appellants, David E. Mike, Ernest S. Mike and Ann Mike, by counsel, respectfully request this Court to vacate the Order of the Indiana Court of Appeals, Second District, on August 21, 1978, to grant transfer on Appellees' Motions to Dismiss Appeal, and to deny said Motions in order that this appeal may be decided on its merits, and for all other relief in the premises.

YAEGER, FOLEY & McLIN

By /s/ Donald F. Foley
Donald F. Foley
Attorney for Appellants-Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed by first class mail to the following attorneys of record this 3 day of November, 1978:

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/s/ Donald F. Foley

Donald F. Foley

Donald F. Foley
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639-5633

APPENDIX "C"

Motion to Correct Errors overruled.

Copies of above served on all parties this date in compliance with Rule 72(d). 12/22/77 All counsel of record.

AND AFTERWARD, to-wit: on the 23rd day of December, 1977, before the Honorable V. Sue Shields, Judge thereof, the following further proceedings were had herein, to-wit:

Thomas Mench's Brief in Opposition to Plaintiffs' Motion to Correct Errors filed, as follows:

CERTIFICATION

I, Marjorie H. O'Laughlin, Clerk of the Supreme Court and Indiana Court of Appeals do hereby certify that the above and foregoing is a full true, complete and correct copy of the original Page 1104 Cause No. 2-378A98 as the same appears upon the record of said court, and in my custody as Clerk.

In testimony Whereof I have hereunto subscribed my name and affixed the Seal of said Court this 22nd day of May, 1979.

/s/ Marjorie H. O'Laughlin, Clerk

By /s/ Jh McKay, Deputy.

SEAL

APPENDIX "D"

AND AFTERWARD, to-wit: on the 4th day of January, 1978, before the Honorable V. Sue Shields, Judge thereof, the following further proceedings were had herein, to-wit:

Plaintiffs' Motion to Correct Errors submitted and denied.

Copies of above served on all parties this date in compliance with Rule 72(d).

CERTIFICATION

I, Marjorie H. O'Laughlin, Clerk of the Supreme court and Indiana Court of Appeals do hereby certify that the above and foregoing is a full true, complete and correct copy of the original Page 1111 of Cause No. 2-378A98 as the same appears upon the record of said court, and in my custody as Clerk.

In testimony Whereof I have hereunto subscribed my name and affixed the Seal of said Court this 22nd day of May, 1979.

/s/ Marjorie H. O'Laughlin, Clerk

By /s/ Jh McKay, Deputy.

SEAL

APPENDIX "E"

AND AFTERWARD, to-wit: on the 20th day of December, 1977, before the Honorable V. Sue Shields, Judge thereof, the following further proceedings were had herein, to-wit:

Sigma Nu Fraternity's Answer Brief in Opposition to Plaintiffs' Motion to Correct Errors filed, as follows:

CERTIFICATION

I, Marjorie H. O'Laughlin, Clerk of the Supreme Court and Indiana Court of Appeals do hereby certify that the above and foregoing is a full true, complete and correct copy of the original Page No. 1096 Cause No. 2-378A98 as the same appears upon the record of said court, and in my custody as Clerk.

In testimony Whereof I have hereunto subscribed my name and affixed the Seal of said Court this 22nd day of May, 1979.

/s/ Marjorie H. O'Laughlin, Clerk

By /s/ Jh McKay, Deputy.
SEAL

APPENDIX "F"

No. 2-378A98
Mike v. Sigma Nu Fraternity

You are hereby notified that the Indiana Court of Appeals has on this day Appellants' Petition for Rehearing Denied. Buchanan, Jr. C.J. Sullivan, J. Dissents.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 18th day of Oct., 1978.

/s/ Billie R. McCullough
Clerk Supreme Court and Court of Appeals

10/18/78
No. 2-378A98

I hereby acknowledge receipt of the above notice.....
.., 197..

Attorney For:
Christian, Waltz, White & Klotz
Noblesville
Peter L. Obremskey, Lebanon
Charles W. Linder, Jr., Indianapolis
John T. Hume, III Indianapolis
Karl Faust, Indianapolis
William M. Osborn, Indianapolis
John D. Cochran, Jr., Indianapolis
Earl C. Townsend, Indianapolis
CC:
Thomas McKeon, Indianapolis

Evan E. Steger, III, Indianapolis
Paul T. Brenton, Danville
Robert W. Wade, Indianapolis
Campbell, Kyle, Proffitt & Campbell,
Noblesville
Bingham, Summers, Welsh & Spilman,
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C. V. Malan, Noblesville
Donald R. Phillippe, Anderson
J. Michael Antrim, Noblesville
Tony Foster, Indianapolis
David A. Steckbeck, Indianapolis
Donald F. Foley, Indianapolis
Bredell, Martin & McTurnan, Indianapolis
James J. Stewart, Indianapolis
Robert C. Riddell, Indianapolis
Kightlinger, Young, Gray & DeTrude, Indianapolis.

APPENDIX "G"

No. 2-378A98

David E. Mike, et al V. Sigma Nu Fraternity, et al

You are hereby notified that the Supreme Court has on this day Appellants' Petition for Transfer is hereby DENIED. Givan, C.J. All Justices Concur.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 9th day of Mar., 1979.

/s/Billie R. McCullough
Clerk Supreme Court and Court
of Appeals

3/9/79 No. 2-378A98

I hereby acknowledge receipt of the above notice
John D. Cochran, Jr., Indianapolis
Bredell Martin & McTurnan,
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